

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)**

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>06.02.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY)251/19</b>
<b>From the order of the</b>	<b>:-</b>	<b>State Tax Officer, Harippad</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2017-18</b>
<b>Name of appellant</b>	<b>:-</b>	<b>Sri.Suresh Vasu, Sougandhika Hotel &amp; Restaurant, Nangiarkulangara, Harippad</b>
<b>Instituted on</b>	<b>:-</b>	<b>05.11.2019</b>
<b>Date of hearing</b>	<b>:-</b>	<b>16.01.2020</b>

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<b>Present for appellant</b>	<b>:-</b>	<b>Sri.K.B. Premkumar Babu,Chartered Accountant</b>
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**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeal filed against the KGST assessment order of State Tax Officer Harippad, Order No.32041251854/2017-18 dated.05.11.2019. The assessment completed based on irregularities found on verification of books of accounts. The assessing authority has arrived at the gross profit reckoning the bar license fee also. Aggrieved by the said order, the dealer defend the case on the following grounds.

1. The Assessment order passed by the learned assessing authority for the year 2017-18 is against the law, facts and circumstances of the case and hence it is illegal and unsustainable.
2. The officer had not carefully considered the replay filed by the appellant to his notice U/s. 17(3) of the Act.
3. The officer ought to have considered the contention of the appellant that the Bar Licensee fee is not forming part of Purchase Turnover .It is the annual fee for running a bar hotel which has no relationship with the quantity of liquor purchased and sold and hence not included in trading account for the calculation of Gross Profit.

4. The officer had not considered the claim that the freight and coolie is for entire items purchased and not for liquor alone and hence he ought to have been taken it on prorate basis.
5. The Gross Profit adopted by the officer is too exorbitant and highly excessive and had no nexus with actual gross profit earned by the appellant. He ought to have adopted accounted gross profit of 60% for the purpose of assessment .

For the reasons set out above it is prayed that the honorable Assistant Commissioner (Appeals) be pleased to cancel the order of assessment and appropriate orders might be passed.

Sri.K.B. Premkumar Babu, Chartered Accountant, appeared and heard the case and argued based on grounds of appeal and submitted documentary evidences and argument notes in connection with the case, the argument notes as follows.

1. The Appellant is registered dealer under the rolls of the State Tax Officer , Haripad , with registration No. 32041251854 , doing business in Hotel and from 2017 August 31<sup>st</sup> onwards a bar attached with the hotel.
2. The assessment order in appeal pertains to the KGST assessment for the year 2017-18.
3. The appellant was served with notice U/s. 17(3) under the KGST Act dated 18-10-2019 by the State Tax Officer Haripad.
4. The appellant has submitted a detailed reply to this notice on 04-11-2019 , explaining all the points to the assessing authority but his explanations were not seriously considered and without going into the merits of the case mechanically completed the assessment. ( Copy of reply attached as Annexur - I )
5. The assessing authority had not considered the submission of the appellant that the Bar License fee had not be reckoned that the calculation of taxable turnover. The learned officer ought to have considered the fact that it is not an expenses to be considered for calculating the gross profit.

Bar license fee is an application fee for grant of license to sell Liquor for human consumption . This is neither supply of goods nor supply of service , hence not forming part of cost of goods sold. This is a onetime fee common to all Bar attached hotels irrespective of the size of bar, area , population , turnover etc.

6. In the assessment order the officer had mentioned that in the previous year also the Bar License fee was reckoned for the purpose of calculation of Gross Profit and the assess had admitted it. (Last paragraph of page 3) .

During the previous year ie. 2016-17, there was no Indian Made Foreign Liquor sale in the assessee's Hotel, but only beer and wine were sold at that time. Since the turnover and amount involved was very low and in order to avoid prolonged litigation, and to cooperate with the department, the appellant had not preferred for an appeal and had remitted the tax as per assessment order. The Appellant prays that the Honorable Assistant Commissioner might be pleased to direct the assessing authority to recalculate the taxable turnover excluding the Bar License fee for the purpose of assessment by appropriate orders.

7. The assessing authority had not seriously considered the submission of the appellant, that the freight charges ought to have been considered in proportion to the purchase turnover, since the freight incurred is not solely for liquor but also for all the items purchased in the Hotel. It may also be noted that the sale of Indian Made Foreign Liquor was started only from 31<sup>st</sup> August 2017 only. The First purchase was effected on 30<sup>th</sup> August 2017. (List of Purchase of Liquor is attached as Annexur -II) . All the Liquor Purchase Invoices produced herewith for the verification of your Honor) . Your Honor might be pleased to give appropriate directions to the assessing authority.
8. The gross profit determined by the learned officer for the purpose determination of Sales turnover of Liquor is too exorbitant and had no nexus with the actual gross profit earned by the assessee .The learned officer had fixed the gross profit at 100% from the 105 %

proposed in the notice . The Assessing Officer's finding that the assessee's hotel is situated at a very prominent area and there is no bars in the nearby are might be correct. But he had not considered the fact that all the liquor consumers will enjoy it in the bar hotels. Since the liquor is available from the retail outlets of the Kerala State Beverages Corporation at a very cheaper rate and hence the appellant was forced to fix the margin of profit for liquor at a very reasonable rate. It may also be noted by your honor that, the majority of the population in and around the location of the appellants Bar Hotel are not well off and are of low or middle income groups. They will not utilize the service of the bar if the rates are high for low cost liquors. Hence the appellant was compelled to fix it in par with the rate of liquor sold by the Retail outlets of the Kerala State Beverages Corporation. The appellant had shown gross profit @ 60 % in the books of accounts. ( Assessment order Page 2 )

9. The attention of your Honor is invited to the judgment of The Honorable High Court of Kerala in ***M/s. Hotel President Vs The State of Kerala*** , even though main matter in the judgment was regarding the quantum of penalty, and gross profit fixed by the Honorable Appellate Tribunal had not been interfered by the court , ie @ 77.78 % , where the assessee had disclosed the gross profit @ 28.91%. The appellant prays that the Honorable Assistant Commissioner may be pleased to fix a reasonable gross profit and appropriate directions might be given to the assessing authority. Copy of the judgment is submitted as Annexure – III.

10. The appellant humbly prays that the appeal might be allowed and justice might be done.

Heard the Chartered Accountant who appeared on behalf of the appellant. Records connected therewith were also meticulously verified. Scrutiny revealed that the assessing authority has arrived at the gross profit taking also in to account of bar license fee. Kist cannot be taken in to account in fixing Sales Turnover under the KGST Act, 1963. It will not form part of the turnover as per Sec 2 (XXVii) of the KGST act 1963. It runs as follows.

***Turnover means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration.***

The authorized representative has opposed to the estimation of gross profit placing reliance on the judgments in Polakulath Wines Vs. State of Kerala [2004] 138 STC 573 & CLASSIC WINES Vs. State of Kerala 138 STC 576. He has also stated that there was no inspection during the relevant year. Scrutiny revealed that bar license issued to the appellant is valid only from 08/17. The arguments put forth in respect of gross profit deserve merit in view of the principles laid down by the High Court of Kerala in the cases mentioned above. So I am of the considered view that the gross profit of 100% adopted by the assessing authority is excessive. To meet the ends of justice it is reduced to 70%. The assessing authority will refix the taxable turnover on the lines indicated above.

Result: Modified

ASSISTANT COMMISSIONER (APPEALS)  
ALAPPUZHA

To The Appellant through a/r  
Copy submitted to Joint Commissioner(Law)  
Copy submitted to Deputy Commissioner,CT,Alappuzha  
Copy to State Tax Officer, Harippad/File